THE DOCTRINE OF ESTOPPEL BY DEED. — The modern doctrine of estoppel by deed is usually regarded as an offspring of the effect given to the feudal warranty in avoiding circuity of action.[1] Under modern methods of conveyancing the operation of the doctrine is, in England, probably restricted to leases,[2] but in America is extended to cover all cases of conveyance, so that if one purports to convey with covenant of warranty land to which he has no title but which he thereafter acquires, the grantee is forthwith legally vested with that title.[3] Inasmuch, however, as this transfer is unaffected by the fact that the grantee's action on the covenant of warranty is barred,[4] or that the truth as to the grantor's purported ownership appears on the face of the deed,[5] the doctrine in its extension can no longer be based on an avoidance of circuity of action, or on the principle of strict estoppel.

There is, however, in many cases an equitable basis for the result in that the grantor, upon the subsequent acquisition of title which he previously purported to convey, has an estate to which another, his grantee, has a better right. However, it should always be recognized that in essence the cases on this general subject demand the application of equitable principles and that a court of law in entertaining them can be justified only as it reaches an equitable result.[6] Recognition of the doctrine as a hard and fast rule of law has inevitably led to inequitable results. This is apparent in two classes of cases. First, when the question arises between grantor and grantee. If the doctrine is invoked as an invariable rule of law, title vests in the grantee, although he may prefer to recover for the breach of warranty.[7] Further the grantor may purchase the land if it depreciates in value and force title on the grantee, or if the land appreciates, await the grantee's suit.[8] That a grantor, primarily in default, should reap advantage from his own wrong is manifestly indefensible. Secondly, when the question arises between the grantee and privies of the grantor. It is clear that all privies of the grantor who are volunteers should be bound by the grantee's equity.[9] But the rule is also applied against purchasers from the grantor, who have relied on the registry and the grantor's apparent title. Such a purchaser is thus defeated by the grantee of the former purported conveyance who claims that the title, when acquired by the grantor, immediately passes to him.[10] Hence a purchaser must at his peril discover whether any grantor, in the chain of title, ever purported to convey the land in question, before his acquisition of it. Equitably, the *bona fide* purchaser who has searched the registry in the usual way should be protected, and the grantee of the former conveyance left to the action on his covenants.[11]

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[1] Co. Lit. 265 a. The feudal warranty bound the lord and his heirs to restore lands of equal value to their vassal if he was evicted. In cases where an heir released his future right with this warranty, his later entry was barred by the rebutter introduced by Coke.

[2] See Rawle, Covenants, 5 ed., § 262; Right *v.* Bucknell, 2 B. & Ad. 278; Finance Co. *v.* Liberator Society, 10 Ch. D. 15. But see Bensley *v.* Burdon, 2 Sim. & St. 519.

[3] Dye *v.* Thompson, 126 Mich. 597.

[4] Gregory *v.* Peoples, 80 Va. 355.

[5] Ayer *v.* Philadelphia, etc., Brick Co., 159 Mass. 84.

[6] Burton *v.* Reeds, 20 Ind. 87.

[7] Baxter *v.* Bradbury, 20 Me. 260.

[8] Reese *v.* Smith, 12 Mo. 344.

[9] Hoyt *v.* Dimon, 5 Day (Conn.) 479.

[10] White *v.* Patten, 41 Mass. 324.

[11] Wheeler *v.* Young, 76 Conn. 44.

In a recent case the equitable nature of the doctrine was recognized. A debtor against whom there existed a judgment lien gave a warranty deed of land which he expected to inherit. The land subsequently descended, and the court held that the grantee took the land subject to the judgment lien. *Bliss* v. *Brown*, 96 Pac. 945 (Kan.). If the legal operation of the doctrine had been rigidly followed, the creditors' rights would have been defeated. The unfortunate results of some of these American cases emphasize the dangers which arise when courts of law, in passing on cases which in reality demand the application of equitable principles, fail to appreciate that intrinsic element.

THE RIGHT OF AN INDIVIDUAL TO PROSECUTE A PUBLIC WRONG. — In a recent case where the plaintiff, a private citizen, although he alleged no special damage, sought to enjoin the defendant from obstructing the land between high and low water mark, the court held that no right to a highway on the strip of land existed, but that even assuming there was such a right the plaintiff was not the proper party to protect it. *Barnes* v. *Midland Railroad Terminal Co.*, 126 N. Y. App. Div. 435. The *prima facie* right of the state to all seaports and arms of the sea is well established and is in its nature twofold.[1] The profits of the sea coast and havens belong to the sovereign; any invasion of this *jus privatum* is a purpresture.[2] On the other hand the sovereign holds for the benefit of all its subjects the right that they may at all times have free and unobstructed passage, and any obstruction of this *jus publicum* is a public nuisance, similar to the blocking of highways and bridges.[3] At the suit of the state a court of equity will, of course, enjoin a violation of these rights[4] since the legal remedy is inadequate.[5] But an individual has no ground for complaint when a purely private right of the state is violated,[6] nor would there seem to be any doubt that he cannot bring suit even when a public right is invaded.[7] The state is the proper plaintiff in such a case, as is the trustee and not the *cestui* in actions to protect the trust property.[8]

An individual, however, may file a bill to enjoin a public nuisance if he shows special damage,[9] that is, if there is an injury peculiar to himself and independent of the annoyance suffered by the public at large.[10] Indeed a bill will be denied if the damage shown by the complainant, while differing in degree from the inconvenience to the public, is of the same kind.[11] This indicates that those cases in which the individual may have relief are not in essence exceptions to the general rule that only the state may sue, but are, rather, a necessary result of the fact that the defendant's act may embody two distinct wrongs: one against the public; the other against the indi-

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[1] Hale, De Jure Maris, 12; De Jure Portibus, 85.
[2] People *ex rel. v.* Jessup, 160 N. Y. 249; see also Attorney-General *v.* Chamberlaine, 4 Kay & J. 292.
[3] King *v.* The Morris & Essex R. R. Co., 18 N. J. Eq. 397, 399.
[4] People *v.* Sturtevant, 9 N. Y. 263.
[5] Silliman *v.* Hudson River Bridge Co., 4 Blatchf. (U. S.) 395.
[6] See Engs *v.* Peckham, 11 R. I. 210.
[7] Jacksonville Ry. Co. *v.* Thompson, 34 Fla. 346.
[8] Carey *v.* Brown, 92 U. S. 171.
[9] Buskirk *v.* U. J. Jude Co., 115 N. Y. App. Div. 330.
[10] Nottingham *v.* B. & P. R. R. Co., 3 McArthur (D. C.) 517; 19 HARV. L. REV. 541.
[11] Pittsburg, Ft. W. & C. Ry. Co. *v.* Cheevers, 149 Ill. 430.